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9 Attorneys for USACM Liquidating Trust

10 **UNITED STATES BANKRUPTCY COURT**
 11 **DISTRICT OF NEVADA**

12 In re:

13 USA COMMERCIAL MORTGAGE
 14 COMPANY,

15 USA CAPITAL REALTY ADVISORS,
 16 LLC,¹

17 USA CAPITAL DIVERSIFIED TRUST
 18 DEED FUND, LLC,

19 USA CAPITAL FIRST TRUST DEED
 20 FUND, LLC,²

21 USA SECURITIES, LLC,³

22 Debtors.

23 **Affects:**

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

23 Case No. BK-S-06-10725-LBR¹
 24 Case No. BK-S-06-10726-LBR¹
 25 Case No. BK-S-06-10727-LBR¹
 26 Case No. BK-S-06-10728-LBR²
 27 Case No. BK-S-06-10729-LBR³

28 **CHAPTER 11**

29 Jointly Administered Under Case No.
 30 BK-S-06-10725 LBR

31 **OMNIBUS OBJECTION OF USACM
 32 LIQUIDATING TRUST TO PROOFS
 33 OF CLAIM BASED UPON
 34 EQUIPMENT LEASES; AND
 35 CERTIFICATE OF SERVICE**

36 Date of Hearing: April 30, 2009

37 Time of Hearing: 9:30 a.m.

38 The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant
 39 to § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and
 40 Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an
 41 order disallowing the Proofs of Claim filed by Bank of America Leasing, successor by
 42
 43

44 ¹ This bankruptcy case was closed on September 23, 2008.

45 ² This bankruptcy case was closed on October 12, 2007.

46 ³ This bankruptcy case was closed on December 21, 2007.



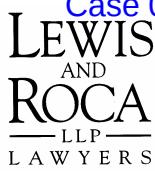
1 merger to Fleet Business Credit, and National City Commercial Capital Corp.
 2 (collectively, "Lessors") against USA Commercial Mortgage Company ("USACM")
 3 based upon equipment leases.

4 **I. INTRODUCTION**

5 1. The following Claimants made claims against USACM based upon
 6 equipment leases upon which USACM defaulted:

Claim #	Name & Address	Lease	Total Claim Amount
10725-00281	Bank of America Leasing Successor By Merger to Fleet Business Credit, LLC c/o Veronika A Rager Risk Operation Team Manager 305 W Big Beaver, Suite 400 Troy, MI 48084	Contract No. 1696325	\$22,799.54
10725-00282	Bank of America Leasing Successor By Merger to Fleet Business Credit, LLC c/o Veronika A Rager Risk Operation Team Manager 305 W Big Beaver, Suite 400 Troy, MI 48084	Contract No. 002-1694452-000	\$44,041.47
10725-00095	National City Commercial Capital Corporation f/k/a Information Leasing Corporation Lisa M Moore Esq 995 Dalton Avenue Cincinnati, OH 45203	Lease No. 404230002	\$45,780.11
10725-01655	National City Commercial Capital Corporation f/k/a Information Leasing Corporation Lisa M Moore Esq 995 Dalton Avenue Cincinnati, OH 45203	Lease No. 404230002	\$30,870.19
10725-01656	National City Commercial Capital Corporation f/k/a Information Leasing Corporation Lisa M Moore Esq 995 Dalton Avenue Cincinnati, OH 45203	Lease No. 404230002	\$14,247.78

22 2. The above claims will be referred to collectively as the "Equipment Lease
 23 Claims." The USACM Trust objects to the allowance of the Equipment Lease Claims
 24 because the (1) claimants failed to give credit for the value of the leased equipment; (2)
 25



1 claimants failed to show that they disposed of the collateral in a commercially reasonable
 2 manner as required by UCC Article 9; (3) claimants failed to mitigate their damages; and
 3 (4) some of the claimants lack standing to assert the claims.

4 **II. JURISDICTION**

5 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334
 6 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
 7 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

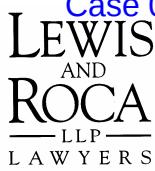
8 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and
 9 Bankruptcy Rule 3007.

10 **III. BACKGROUND**

11 1. On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA
 12 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital
 13 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC
 14 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary
 15 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate
 16 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of
 17 the Bankruptcy Code. Debtors’ post-petition management of the Debtors was under the
 18 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
 19 (“Mesirow”), who served as the Chief Restructuring Officer.

20 2. USACM is a Nevada corporation that, prior to the Petition Date, was in the
 21 business of underwriting, originating, brokering, funding and servicing commercial loans
 22 primarily secured by real estate, both on behalf of investors and for its own account.

23 3. On January 8, 2007, this Court entered its Order Confirming the “Debtors’
 24 Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.
 25 2376] (the “Confirmation Order”).



1 4. Under the Plan, the USACM Trust is the successor to USACM with respect
 2 to standing to seek allowance and disallowance of Claims.

3 5. The USACM Trust exists as of the Effective Date of the Plan, which was
 4 March 12, 2007. Geoffrey L. Berman is the Trustee.

5 **IV. APPLICABLE AUTHORITY**

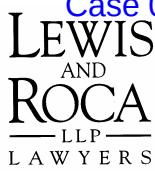
6 1. Under the Bankruptcy Code, any Claim for which a proof of claim has been
 7 filed will be allowed unless a party in interest objects. If a party in interest objects to the
 8 proof of claim, the Court, after notice and hearing, shall determine the amount of the
 9 Claim and shall allow the Claim except to the extent that the Claim is "unenforceable
 10 against the debtor . . . under any . . . applicable law for a reason other than because such
 11 claim is contingent or unmatured." 11 U.S.C. § 502(b).

12 2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.
 13 § 502(a). This objection is timely under the confirmed Plan, as the deadline for such
 14 objections has been extended to June 10, 2009, by this Court's orders.

15 3. A properly filed proof of claim is presumed valid under Bankruptcy Rule
 16 3001(f). However, once an objection to the proof of claim controverts the presumption,
 17 the creditor ultimately bears the burden of persuasion as to the validity and amount of the
 18 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,
 19 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996). The ultimate
 20 burden of proof as to the validity of a proof of claim "remains at all times upon the
 21 claimant." *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,
 22 1039 (9th Cir. 2000).

23 **V. OBJECTION TO THE LEASED EQUIPMENT CLAIMS**

24 1. The USACM Trust objects to the Leased Equipment Claims and requests that
 25 they be disallowed in their entirety.



1 2. The USACM Trust objections to the Leased Equipment Claims because the
2 claimants provide no proof that they disposed of the abandoned collateral in a
3 commercially reasonable manner as required by UCC Article 9 and then provided the
4 USACM Estate with a credit for the value of the leased equipment, all of which was
5 abandoned by the debtor.

6 3. The USACM Trust objections to the Leased Equipment Claims because the
7 claimants provide no proof that they mitigated their damages.

8 4. The USACM Trust objects to Proof of Claim No. 10725-00095 by National
9 City Commercial Capital Corporation because the lessor shown on the lease is Information
10 Leasing Corporation, not the claimant. Thus, National City Commercial Capital
11 Corporation lacks standing to bring the claim.

12 5. The USACM Trust objects to Proof of Claim No. 10725-01655 by National
13 City Commercial Capital Corporation because the lessor shown on the lease is Information
14 Leasing Corporation, not the claimant. Thus, National City Commercial Capital
15 Corporation lacks standing to bring the claim.

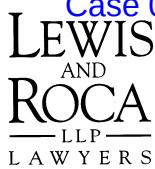
16 6. The USACM Trust objects to Proof of Claim No. 10725-01656 by National
17 City Commercial Capital Corporation because the lessor shown on the lease is Information
18 Leasing Corporation, not the claimant. Thus, National City Commercial Capital
19 Corporation lacks standing to bring the claim.

20 7. The USACM Trust reserves the right to further object to any and all Claims,
21 whether or not the subject of this Objection, for allowance and/or distribution purposes on
22 any other grounds. The USACM Trust further reserves the right to modify, supplement
23 and/or amend this Objection as it pertains to any Claim or claimant herein.

24

25

26



1 **VI. CONCLUSION**

2 The USACM Trust respectfully requests that the Court disallow the lease claims in
 3 their entirety. The USACM Trust also requests such other and further relief as is just and
 4 proper.

5 Dated: March 30, 2009.

6 LEWIS AND ROCA LLP

7 By /s/ John Hinderaker (#18024)

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15 *Attorneys for the USACM Liquidating Trust*

16 Copy of the foregoing mailed by first class
 17 postage prepaid U.S. mail on March 30, 2009 to:

18 Bank of America Leasing
 19 Successor By Merger to
 20 Fleet Business Credit, LLC
 21 c/o Veronika A Rager
 22 Risk Operation Team Manager
 23 305 W Big Beaver, Suite 400
 24 Troy, MI 48084

25 National City Commercial Capital
 26 Corporation f/k/a Information Leasing
 27 Corporation
 28 Lisa M Moore Esq
 29 995 Dalton Avenue
 30 Cincinnati, OH 45203

31 /s/ Carrie Lawrence

32 Carrie Lawrence